

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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BILL DRAFT 2015-RB-2A [v.3] (11/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: DES Board of Review.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO RATIFY PAST UNEMPLOYMENT INSURANCE APPEALS DECISIONS, TO
AMEND THE APPOINTMENT PROCESS FOR THE BOARD, AND TO CREATE
STAGGERED TERMS FOR MEMBERS OF THE BOARD OF REVIEW.

The General Assembly of North Carolina enacts:

PART I. RATIFY APPEALS DECISIONS

SECTION 1.(a) The following decisions in an appeal by a party to a decision of an appeals referee or hearing officer under Chapter 96 of the General Statutes are hereby validated and given the same legal effect as if those decisions had been issued by the Board of Review:

- (1) Decisions issued by the Assistant Secretary of Commerce for the Division of Employment Security or by the Secretary of Commerce's designee.
- (2) Decisions issued by the three individuals appointed by the Governor in December 2013 to serve as members of the Board of Review.

SECTION 1.(b) This section is effective when it becomes law and applies to decisions rendered on or after November 1, 2011, and before the effective date of Senate Joint Resolution ____.

PART II. EXPOUND UPON THE APPOINTMENT PROCESS FOR THE BOARD OF REVIEW

SECTION 2.(a) G.S. 96-4(b) and Section 21 of S.L. 2013-224 are repealed.

SECTION 2.(b) Article 2D of Chapter 96 of the General Statutes is amended by adding a new section to read:

"§ 96-15.3. Board of Review.

(a) Purpose. – The Board of Review is created to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Division. The Department of Commerce must assign staff to the Board of Review. The Board of Review and its staff must perform their job responsibilities independent of the Governor, the General Assembly, the Department, and the Division and in accordance with any written guidance promulgated and issued by the U.S. Department of Labor.

(b) Members. – The Board of Review consists of three members appointed by the Governor and subject to confirmation by the General Assembly as provided in subsection (c) of this section. One member must be classified as representative of employees, one member must be classified as representative of employers, and one member must be classified as



1 representative of the general public. The member appointed to represent the general public will
2 serve as chair of the Board of Review and must be a licensed attorney in this State.

3 Members of the Board of Review serve staggered four-year terms. A term begins on July 1
4 of the year of appointment and ends on June 30 of the fourth year. No individual may serve
5 more than two terms on the Board of Review. In calculating the number of terms served, a
6 partial term that is less than 24 months in length will not be included. The General Assembly
7 must set the annual salaries of the Board of Review in the current Operations Appropriations
8 Act.

9 (c) Confirmation. – Appointments of members to serve on the Board of Review are
10 subject to confirmation by the General Assembly by joint resolution. The Governor must
11 submit the name of the individual nominated by the Governor to be appointed to the Board of
12 Review to the General Assembly for confirmation on or before May 1 of the year of the
13 expiration of the term. If the General Assembly does not confirm the appointment by May 30,
14 the office will be considered vacant and must be filled in accordance with subsection (d) of this
15 section. The Governor may not resubmit the name of the nominee whom the General Assembly
16 did not confirm for the office. If the Governor fails to timely submit a nomination, the General
17 Assembly will appoint to fill the succeeding term as provided in subsection (e) of this section.

18 (d) Vacancies. – For the purpose of this subsection, the General Assembly is not in
19 session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the
20 Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular
21 Session. A vacancy in an office of the Board of Review prior to the expiration of the term of
22 office must be filled in accordance with this subsection:

23 (1) During legislative session. – If a vacancy in an office arises or exists when
24 the General Assembly is in session, the Governor must submit the name of
25 the individual to be appointed to fill the vacancy for the remainder of the
26 unexpired term within 30 days after the vacancy arises to the General
27 Assembly for confirmation by the General Assembly. If the General
28 Assembly does not confirm the appointment within 30 days after the General
29 Assembly receives the nomination, the office will be considered vacant and
30 must be filled in accordance with this subsection. The Governor may not
31 resubmit the name of the nominee whom the General Assembly did not
32 confirm for the vacancy. If the Governor fails to timely submit a nomination,
33 the General Assembly will appoint to fill the vacancy as provided in
34 subsection (e) of this section.

35 (2) Not during legislative session. – If a vacancy in an office arises or exists
36 when the General Assembly is not in session, the Governor must appoint an
37 individual to that office to serve on an interim basis pending confirmation by
38 the General Assembly. The Governor must submit the name of the
39 individual to be appointed to fill the vacancy for the remainder of the
40 unexpired term to the General Assembly for confirmation within 14 days of
41 the date the General Assembly convenes or reconvenes the next Regular
42 Session. If the Governor fails to timely submit a nomination, the General
43 Assembly will appoint to fill the vacancy as provided in subsection (e) of
44 this section.

45 (e) Legislative Appointments. – If the Governor fails to timely submit the name of an
46 individual to be appointed to the Board of Review as provided in this section, then the General
47 Assembly may appoint an individual to fill the vacancy in accordance with G.S. 120-121 and
48 the provisions of this subsection. If the vacancy occurs in an odd-numbered year, the
49 appointment is made upon the recommendation of the President Pro Tempore of the Senate. If

the vacancy occurs in an even-numbered year, the appointment is made upon the recommendation of the Speaker of the House of Representatives."

PART III. CREATE STAGGERED TERMS FOR THE BOARD OF REVIEW

SECTION 3. To achieve the staggered terms for the members of the Board of Review in accordance with G.S. 96-15.3, as enacted by this act, and notwithstanding the appointment provisions in G.S. 96-4(b), as repealed by this act, and in G.S. 96-15.3, as enacted by this act:

- (1) The term of the member serving on the Board of Review that represents employers expires June 30, 2015.
- (2) The term of the member serving on the Board of Review that represents employees expires June 30, 2016.
- (3) The term of the member serving on the Board of Review that represents the general public expires June 30, 2017.

PART IV. ENSURE INDEPENDENCE OF BOARD OF REVIEW AND ITS STAFF

SECTION 4. By May 1, 2015, the Secretary of Commerce and the Chair of the Board of Review (BOR) shall jointly make a detailed written report to the Chairs of the Joint Legislative Oversight Committee on Unemployment Insurance, the Chairs of the Senate Appropriations Committee on Natural and Economic Resources, the Chairs of the House of Representatives Appropriations Subcommittee on Natural and Economic Resources and the Fiscal Research Division on all of the following:

- (1) Measures taken to ensure the independence of BOR staff regarding higher level appeals in accordance with State law and federal guidelines.
- (2) The number, types, and classifications of positions (including coverage under the State Human Resources Act) assigned to the staff the BOR.
- (3) For each BOR staff member, the percentage of duties that involve work only for the BOR and the nature of duties performed by BOR staff only for the BOR.
- (4) For each BOR staff member, the percentage of duties that do not involve the work of the BOR and the nature of duties performed by BOR staff that do not involve work for the Board of Review.
- (5) Whether or not adequate staff is assigned to the BOR. And, if not, what additional resources are required to achieve adequate staffing.

PART V. EFFECTIVE DATE

SECTION 5. Except as otherwise provided, this act is effective when it becomes law.